UNITED NATIONS

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ENGLISH ONLY*

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

BAHAMAS

Communicated by the Government of the Bahamas

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF TREATIES FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

31 March, 1988

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* Note by the Secretariat: The present document is a direct reproduction of the texts communicated to the Secretariat.

V.91-24873

No 2 of 1988

An Act to provide for the implementation of treaties for Mutual Legal Assistance in Criminal Matters.

(Date of Assent: 31 March, 1988)

Enacted by the Parliament of The Bahamas.

Short title and commencement

1.—(1) This Act may be cited as the Mutual Legal Assistance (Criminal Matters) Act 1988.

(2) This Act shall come into operation on such date as the Minister may by notice in the Gazette appoint; and different dates may be appointed for different provisions of this Act.

Interpretation

2.—(1) In this Act —

"Competent Authority" means the Attorney-General;

"data" means representation in any form of information or concepts;

"foreign state" means a state that is a party to a treaty;

"offence" means an offence within the meaning of the relevant treaty;

"record" means any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device;

"request" means a request for assistance presented pursuant to a treaty;

"treaty" means a treaty, convention or other international agreement providing primarily for mutual legal assistance in criminal matters between a foreign state and The Bahamas and referred to in the Schedule;

"law enforcement officer" means any peace officer, a member of the Royal Bahamas Defence Force, a Customs Officer as defined in the Customs Management Act 1976, an officer of the Department of Immigration or an officer in the Prison Service when acting in relation to the carrying out of any request approved by the Competent Authority.

(2) Subject to subsection (1) other terms and expressions used in this Act shall unless the context otherwise requires have the meanings assigned to them in the relevant treaty.

Inconsistency with other laws.

3.—(1) In the event of any inconsistency between the provisions of this Act and of any other written law, other than the provisions of an Act prohibiting the disclosure of information or prohibiting its disclosure except under certain conditions, the provisons of this Act prevail to the extent of the inconsistency.

(2) Nothing in this Act or a treaty shall be construed as to abrogate or derogate from an agreement, arrangement or practice respecting co-operation between any governmental agency of The Bahamas and a foreign or international authority or organisation.

Execution of request by Competent Authority.

4.—(1) Where a request is presented in accordance with the provisions of a treaty to the Competent Authority by a foreign state the Competent Authority shall deal with that request in such a manner as is requisite to discharge the obligations of The Bahamas under that treaty.

(2) The Competent Authority may not give effect by means of the provisions of this Act to a request unless the relevant treaty provides for mutual assistance with respect to the subject matter of the request.

Requests relating to fines.

5.—(1) Where the Competent Authority approves of a request to enforce the payment of a fine imposed by a court of criminal jurisdiction of a foreign state the enforcement thereof may be pursued in a court of The Bahamas by way of civil proceedings instituted in the name of the foreign state as if the fine had been imposed by the latter court.

(2) No proceedings under subsection (1) shall be instituted more than five years after the fine was imposed.

6.—(1) The provisions of any written law respecting the grant of authority to and powers and privileges of a law enforcement officer to carry out searches or seizures shall extend with such modifications as the circumstances require to any search or seizure which is the subject matter of a request approved by the Competent Authority.

(2) Where the Competent Authority approves of a request for a search or seizure to be carried out in The Bahamas regarding an offence with respect to which the foreign state has jurisdiction the Competent Authority shall ensure that all documents or information necessary to apply for a search warrant are provided to the relevant authority concerned in the execution of the request.

(3) The authority to whom an application is made pursuant to subsection (2) for the issue of a search warrant may issue the warrant authorising a law enforcement officer named therein to execute it anywhere in The Bahamas where the authority is satisfied by statements under oath that there are reasonable grounds for believing that —

(a) an offence has been committed within the foreign state which has made the request for the relevant search;

(b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in a building, vessel, aircraft, receptacle or other place in The Bahamas; and

(c) it would not, in the circumstances, be appropriate for an order under section 7(1) to be made.

(4) A law enforcement officer who executes a search warrant in relation to a request shall before entering the place or premises to be searched or as soon as practicable thereafter give a copy of the warrant to any person who is present and appears to be in

charge of the place or premises or where the place or premises are unoccupied the officer shall on entering or as soon as practicable thereafter cause a copy of the warrant to be affixed in a prominent position within the place or premises.

(5) A law enforcement officer on executing a search warrant in relation to a request may in addition seize any thing that he believes on reasonable grounds will afford evidence of, has been obtained by, or used in, or is intended to be used in, the commission of an offence under the laws of The Bahamas.

(6) No record or thing seized for the purpose of compliance with a request shall be sent to the foreign state until the Competent Authority is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing seized.

7.—(1) Where the Competent Authority approves of a request to obtain evidence to be used in proceedings in a foreign state a court to which any application is made by the Competent Authority for the purpose shall have jurisdiction to entertain the application and to make such order as it sees fit to give effect to the request having regard to the provisions of the treaty under which the request was made.

(2) Subject as hereinafter provided in this section the procedure applicable to any application under any other written law pertaining to the obtaining of evidence for use abroad and the mode of carrying out and enforcement of any order of the court therefor shall mutatis mutandis apply to an application referred to in subsection (1).

(3) At the conclusion of an examination carried out for the taking of evidence in relation to a request the Registrar of the Supreme Court shall forward duly certified under the seal of the court to the Competent Authority all depositions, exhibits or things taken or seized pursuant to the order obtained for the examination.

(4) A person named in an order made under subsection (1) may refuse to answer one or more questions or to produce certain records or things to the examiner if not a judge if —

(a) the refusal is based on a law in force in The Bahamas;

(b) to require the person to answer the questions or to produce the records or things would constitute a breach of a privilege recognized by a law in force in the foreign state that presented the request;

(c) to answer the questions or produce the records or things would constitute the commission by the person of an offence against a law in force in the foreign state that presented the request.

(5) Where a request by the Competent Authority is presented to a foreign state and a person there refuses to answer one or more questions or to give up certain records or things by reason of a law in force in The Bahamas a judge may determine the validity of the refusal on an application made, after reasonable notice to the person, by the Competent Authority.

(6) Where a person refuses to answer a question or to produce a record or thing, the examiner shall continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

(7) A person named in an order made under subsection (1) who refuses to answer one or more questions or to produce certain records or things shall, within five days, give to the examiner if not a judge a detailed statement in writing of all the reasons on which the person bases the refusal to answer each question that the person refuses to answer or to produce each record or thing that the person refuses to produce.

(8) The examiner shall make a report to the Registrar accompanied by —

(a) a transcript of every examination made in the relevant matter;

(b) a general description of every record or thing produced at the examination pursuant to the order appointing the examiner; and

(c) a copy of every statement given under subsection (7) of the reasons for a refusal to answer any questions or to produce any record or thing.

(9) Where the Registrar is in possession of a statement referred to in paragraph (c) of subsection (8) the Registrar shall refer the documents and anything received under that subsection to a judge who shall determine whether the reasons contained in any statement given under subsection (7) that purport to be based on a law in force in The Bahamas are well-founded and where the judge determines that they are, that determination shall be mentioned in any order that the judge makes under subsection (11) but where the judge determines that they are not, the judge shall order that the person named in the order made under subsection (1) answer the questions or produce the records or things.

(10) A copy of every statement given under subsection (7) that contains reasons that purport to be based on a law in force in the foreign state shall be appended to any order that the judge makes under subsection (11).

(11) A judge to whom a report is made under subsection (8) may order that there be sent to the foreign state the report and any record or thing produced, as well as a copy of the order accompanied by a copy of any statement given under subsection (7) that contains reasons that purport to be based on a law in force in the foreign state as well as any determination of the judge made under subsection (9) that the reasons contained in a statement given under subsection (7) are well-founded.

(12) The Competent Authority may when complying with a request upon receipt of the results of an examination for the tak-

ing of evidence make those results available to the foreign state subject to such terms and conditions as are permitted by the relevant treaty.

(13) No record or thing that may be sent pursuant to subsection (11) shall be so sent until the Competent Authority is satisfied that the foreign state that made the request has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

(14) The execution of an order made under subsection (1) that was not completely executed because of a refusal, by reason of a law in force in the foreign state, to answer one or more questions or to produce certain records or things to an examiner may be continued where a person designated by the foreign state determines that the reasons are not well-founded and the foreign state so advises the Competent Authority.

(15) No person named in an order made under subsection (1) whose reasons for refusing to answer a question or to produce a record or thing are determined, in accordance with subsection (14) not to be well-founded, shall, during the continued execution of the order, refuse to answer that question or produce that record or thing to the examiner except with the permission of a judge.

Contempt of Court.

8. A person named in an order made under section 7(1) commits a contempt of court if the person refuses to answer a question or to produce a record or thing to the examiner —

(a) without giving the detailed statement required by section 7(7); or

(b) where the person was already asked the same question or requested to produce the same record or thing and all of the reasons on which the person based the earlier refusal were determined not to be well-founded by —

(i) a judge, if the reasons were based on a law in force in The Bahamas; or

(ii) a person designated by the foreign state [illegible] by a court of the foreign state, if the reasons were based on a law in force in the foreign state.

Request relating to transfer of persons in custody.

9.—(1) Where the Competent Authority approves a request to have a person who is detained in lawful custody by order of a court transferred to a foreign state the Competent Authority may, where the Competent Authority is satisfied that the person de-

tained consents to the transfer for the purposes of the request, submit to —

(a) in the case of a person who is detained but not undergoing a term of imprisonment, the court which ordered the detention, an application for the transfer of the person detained; and

(b) in the case of a person who is undergoing a term of imprisonment, the Superintendent of Prisons a transfer order under the hand of the Competent Authority.

(2) The application or transfer order mentioned in subsection (1) shall —

(a) state the name of the detained person;

(b) state the place of confinement of the detained person;

(c) designate a person or class of persons into whose custody the detained person is sought to be delivered;

(d) state the place to which the detained person is sought to be transferred;

(e) state the reasons why the detained person is sought to be transferred; and

(f) specify a period of time at or before the expiration of which the detained person is to be returned.

(3) Where a court is in receipt of an application under subsection (1) and is satisfied that the detained person consents to the transfer to the foreign state the court may issue a transfer order to the Superintendent of Prisons or other person in whose custody the person is being detained and in respect thereto the court may have the person detained to be brought up and be examined with respect to the transfer.

(4) A transfer order issued pursuant to subsection (1)(b) or (3) shall be sufficient authority for the Superintendent of Prisons or other person in whose custody the person is detained or imprisoned to permit the removal of the person named in the order from such custody in accordance with the directions of the Competent Authority.

(5) Directions issued by the Competent Authority for the transfer of a person shall —

(a) set out the name of the detained person and his place of confinement;

(b) direct the person who has custody of the detained person to deliver him into the custody of a person who is designated in the directions or who is a member of a class of persons so designated;

(c) direct the person designated under paragraph (b) to take the detained person to the foreign state and, on the return of the detained person to The Bahamas, to return him to the place of confinement where he was when the order was made;

(d) state the reasons for the transfer; and

(e) fix the period of time at or before the expiration of which the detained person must be returned.

(6) A person transferred pursuant to subsection (4) shall be deemed to be in lawful custody during the transfer and during the period in which he is in the foreign state in accordance with the transfer and such time shall count for all purposes under the laws of The Bahamas as if he had been in custody in The Bahamas.

(7) A person who is in lawful custody in a foreign state and who is transferred to The Bahamas in consequence of a request made by the Competent Authority to that state shall be deemed to be in lawful custody.

(8) Any person who is the subject of a transfer referred to in subsection (6) or (7) may be released from custody upon such conditions as to bail or otherwise as may be agreed between the Competent Authority of The Bahamas and that of a foreign state and shall in any event be released no later than the date on which he would have been released if he had not been so transferred.

(9) The Competent Authority may give directions for the detention in The Bahamas of a person who has been transferred to The Bahamas out of custody in a foreign state pursuant to a request by the Competent Authority and any such directions shall be sufficient authority for the detention and shall not be questioned in or be the subject of any proceedings in The Bahamas.

Provision of assistance in lending exhibits

10.—(1) Where the Competent Authority approves of a request to have an exhibit that was admitted in evidence in a criminal proceeding in a court lent to the requesting state the Compe-

tent Authority may make an application to the court that has possession of the exhibit for a loan order.

(2) Reasonable notice of the intended application should be given to the parties concerned in the criminal proceeding and shall —

(a) contain a description of the exhibit requested to be lent;

(b) designate a person or class of persons to whom the exhibit is sought to be given;

(c) state the reasons for the request, as well as contain a description of any tests that are sought to be performed on the exhibit and a statement of the place where the tests will be performed;

(d) state the place or places to which the exhibit is sought to be removed; and

(e) specify a period of time at or before the expiration of which the exhibit is to be returned.

(3) Where the court to which an application under subsection (1) is made is satisfied that the foreign state has requested the loan for a fixed period and has agreed to comply with the terms and conditions that the court proposes to include in any loan order, the court may after considering any representations of the persons to whom notice of the application was given in accordance with subsection (2) make a loan order.

(4) A loan order made under subsection (3) shall —

(a) contain a description of the exhibit;

(b) order the person who has possession of the exhibit to give it to a person designated in the order or who is a member of a class of persons so designated;

(c) contain a description of any tests thereby authorized to be performed on the exhibit, as well as a statement of the place where the tests may be performed;

(d) fix the place or places to which the exhibit may be removed; and

(e) fix the period of time at or before the expiration of which the exhibit must be returned.

(5) A loan order made under subsection (3) may include any terms or conditions that the court making it considers desirable, including those relating to the preservation of the exhibit.

(6) A court that made a loan order may vary its terms and conditions.

(7) The burden of proving that an exhibit lent to a foreign state pursuant to a loan order made under subsection (3) and returned to The Bahamas is not in the same condition as it was when the loan order was made or that it was tampered with after the loan order was made is on the party who makes that allegation and, in the absence of that proof, the exhibit shall be deemed to have been continuously in the possession of the court which made the loan order.

Admissibility of evidence obtained abroad

11.—(1) A record or a copy thereof and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, sent to the Competent Authority by a foreign state in accordance with a request made by The Bahamas is not inadmissible in evidence in any proceedings by reasons only that a statement contained in the record, copy, affidavit, certificate or other statement is hearsay or a statement of opinion.

(2) For the purpose of determining the probative value of a record or copy thereof admitted in evidence under this Act a court or other tribunal may examine the record or copy, receive evidence orally or by affidavit, including evidence as to the circumstances in which the information contained in the record or copy was written, recorded, stored or reproduced, and draw any reasonable inference from the form or content of the record or copy.

(3) A thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a foreign state as to the identity and possession of the thing from the time it was obtained until its sending to the Competent Authority by the foreign state in accordance with a request by The Bahamas, are not inadmissible in evidence in any proceedings by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion.

(4) An affidavit, certificate or other statement mentioned in the preceding subsections is, in the absence of evidence to the contrary, proof of the statements contained therein without proof of the signature or official character of the person appearing to have signed the affidavit, certificate or other statement.

(5) Unless the court decides otherwise, no record or copy thereof, no thing and no affidavit, certificate or other statement mentioned in subsection (1), (2), or (3) shall be received in evidence in any proceedings unless the party intending to produce it has given to the party against whom it is intended to be produced

four days' notice, excluding holidays, of that intention, accompanied by a copy of the record, copy, affidavit, certificate or other statement.

(6) The service of a document in a foreign state may be proved by affidavit of the person who served it.

Confidentiality

12.—(1) Subject to section 11(5) a record sent to the Competent Authority by a foreign state in accordance with a request made by the Competent Authority is privileged and no person shall disclose to anyone the record or its purport or the contents of the record or any part thereof before the record, in compliance with the conditions on which it was so sent, is made public or disclosed in the course or for the purpose of giving evidence.

(2) No person in possession of a record mentioned in subsection (1) shall be required in connection with any legal proceedings to give evidence relating to any information that is contained in the record or to produce the record.

Powers ancillary to execution of a request

13.—(1) Where the execution of a request requires the issue under the laws of The Bahamas of a subpoena or other necessary order by a judge, magistrate or justice of the peace a certificate given by the Competent Authority that the issue of any such document or order is required for the purpose of a request shall subject to section 6(3) be sufficient authority for the issue or making of same without further enquiry.

(2) Notwithstanding the provisions of any other law if the execution of any request approved by the Competent Authority requires the service of any document or the seizure of any article any law enforcement officer shall assist in such service or seizure to the same extent as he would be required so to do in the case of the service or seizure authorised by a court and for that purpose he shall be deemed to be acting in the execution of his duty and to have the same powers and privileges as if acting in pursuance of the authority of the court.

14.—(1) The Minister may make Regulations for the carrying into effect of the other provisions of this Act.

(2) The Minister may make Orders for the modification and adaptation of any law as he considers necessary for the purpose of giving effect to any treaty or any request made thereunder or for Orders amending the Schedule.

(3) Any Order made by the Minister under subsection (2), other than an Order amending the Schedule, shall be subject to affirmative resolutions of both the House of Assembly and the

Senate so that no Order shall come into operation unless and until approved by those resolutions.

Protection of persons appearing in response to a request

15. Subject to section 9(9) any person who enters The Bahamas in response to a request made to a foreign state by the Competent Authority for the appearance of that person in accordance with a treaty, while in The Bahamas shall not be subject to service of any process or subjected to any restriction of his personal liberty by reason of anything done or omitted by him in The Bahamas or elsewhere prior to his departure from that foreign state in conformity with such request:

Provided that the immunity conferred by the foregoing provisions of this section shall cease ten days after that person has been notified by the Competent Authority that his presence is no longer required in The Bahamas or, if he has earlier left The Bahamas, that he is not required by the Competent Authority to return for the purpose of a request.

Offences

16.—(1) Any person who having been ordered by a court of the Competent Authority in accordance with this Act or by any person acting in that behalf to produce any documents which are in his possession or under his control, fails so to do, shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(2) Any person who, contrary to the provisions of section 12(1), informs any person, other than his attorney, of the fact of the issue of a request or of any communication relevant to the matter to which the request relates, shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(3) Any person who, when required so to do in accordance with any subpoena served upon him, refuses to attend as required or to provide testimony in response to a request, shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(4) The provisions of subsections (1), (2) and (3) shall be without prejudice to the provisions of any law with regard to the liability of any person to be dealt with for failure to comply with any subpoena or other order issued by any court:

Provided that no person shall be punished both under this section and any other law for an offence relating to the same failure to comply with the same order.

Extension of Court's jurisdiction in the taking of evidence

17. Notwithstanding anything to the contrary in this Act or any other law the jurisdiction of a court under any existing law which enables the taking of evidence in The Bahamas for the purpose of criminal proceedings pending abroad shall extend to any application made for the purpose of a request approved by the Competent Authority whether or not such proceedings are pending or are proceedings not cognisable by that law or in which an order for the taking of evidence is not made in keeping with the previous practice of the court.

Manner of executing requests

18. An agency or department of government or a court shall, in giving effect to a request approved by the Competent Authority, have such powers as are necessary to execute the request in the manner sought under the request.

Charge upon the Consolidated Fund

19. All sums expended by the Competent Authority in the carrying out of a request shall be charged upon the Consolidated Fund.

SCHEDULE (Section 2)

MUTUAL LEGAL ASSISTANCE TREATIES IN CRIMINAL MATTERS

1. Treaty between the Commonwealth of The Bahamas and the United States of America on Mutual Assistance in Criminal Matters executed by the government of The Bahamas on the 12th day of June 1987.